being illegal, a recovery may be had for goods sold thereunder and the question of corporate existence is merely collateral thereto and cannot be raised. *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540.

DAMAGES—INSTRUCTIONS.—Appellee sued appellant in an action for personal injuries and recovered damages in the trial court. The trial court in instructing the jury told them they might find a verdict for such an amount as in their judgment the evidence of the case warranted and enumerated certain things they might take into consideration, but did not give any instructions concerning contributory negligence, and the defense failed to ask for such. *Held*, that the instructions were good and correctly stated the rule of law which obtained in Mississippi as to guiding the jury. *Lindsay Wagon Co.* v. *Nix*, (Miss. 1915) 67 So. 459.

In the leading case of *B. & O. Ry. Co.* v. *Carr*, 71 Md. 135, the rule was laid down that an instruction which told the jury they might give such damages as in their judgment, under the circumstances, would compensate the plaintiff, was bad. The case held that the court "must inform the jury what was the true measure of damages, whether the point was taken or not." A jury, in other words, cannot use their own discretion in awarding damages, but must follow settled rules which the court must give them. *Chicago, E. & L. S. Ry. Co.* v. *Adamick*, 33 Ill. App. 412; *Chicago, B. & O. Ry. Co.* v. *Kuck*, 112 Ill. App. 620. In cases of personal injury, however, in some jurisdictions the strict rule is relaxed and it is held that if the jury are told that they may use their judgment "in view of all the evidence" that is sufficient. *Pittsburg C. C. & St. L. Ry. Co.* v. *Carlson*, 24 Ind. App. 559; *Gulf & S. I. Ry Co.* v. *Nelson*, 82 Miss. 653; *Kelley* v. *Stewart*, 93 Mo. App. 47; *Boltz* v. *Town of Sullivan*, 101 Wisc. 608. Contra. *L. S. & M. S. Ry. Co.* v. *May*, 33 Ill. App. 366; *Louisville & N. Ry. Co.* v. *Mason*, 24 Ky. Law Rep. 1623. This case also holds, due however to a Mississippi statute, that the court cannot of its own accord instruct on points not asked for, whereas in *B. & O. Ry. Co.* v. *Carr* it was held to be the duty of the court to do so.

DAMAGES—MISTAKE IN TELEGRAM.—Plaintiff received the following message to be delivered, "Button pike eighty thousand francs." The agent of plaintiff delivered it to the agent of defendant to be transmitted under an agreement existing between the two companies. The words "Button pike," were code words indicating the sender and also containing an order to pay the sum later mentioned. In transmission a mistake was made, not in code parts of the message but in changing "eighty" to "eight." Due to this error the sender suffered large damages which he recovered from plaintiff who now sues for the mistake of the defendant. The action is brought in tort because of a statute in Nebraska making telegraph companies liable for all damages resulting from mistakes. *Held* defendant was liable for the whole damage. *American Express Co.* v. *Postal Telegraph-Cable Co. of Nebraska*, (Neb. 1915) 151 N. W. 240.

Due to the statute of Nebraska which made telegraph companies liable for all damages resulting from mistake or non-delivery of messages, and decisions

of the Nebraska courts holding that telegraph companies are common carriers, the familiar rule of *Hadley* v. *Baxendale* was avoided in this case by bringing the action in tort for a breach of duty. In jurisdictions which have such a statute such a rule has been followed. *Western Union Tel. Co.* v. *Eubank,* 100 Ky. 591; *Fisher* v. *Western Union Tel. Co.* 119 Wisc. 146. The unusual point in this case is the fact that the message was partly in cipher and that the mistake was in the part not in cipher. The question of liability for cipher messages does not seem to have been touched on in this case but it seems it might well have been urged as a defense. The general rule is that the transmitting company is not liable for more than nominal damages in case of cipher messages. *Western Union Tel. Co.* v. *Wilson,* 32 Fla. 527; *Western Union Tel. Co.* v. *Martin,* 9 Ill. App. 587. In some of the jurisdictions which have held telegraph companies as common carriers and unable to limit their liability, the rule is applied to cipher messages as well as others. *Postal Telegraph Co.* v. *Wells,* 82 Miss. 733; *Western Union Tel. Co.* v. *Eubank,* 100 Ky. 591. Such a decision would be the logical outcome of statutes like the one here cited if carried to a conclusion, but because of the attitude of the courts in regard to cipher messages, it should not be inferred from a decision like this.

DAMAGES—REMOTENESS.—Plaintiff had agreed to thresh all the grain of the defendant. He threshed the wheat and oats and then breached the contract and refused to thresh the flax. The flax was injured by the weather, not due to any fault or delay of the defendant. Plaintiff in this case is suing for the amount earned by threshing the wheat and oats and the defendant seeks to set off the damages resulting from plaintiff's failure to completely perform. *Held,* that the damages due to the failure to perform the contract were too remote and not in contemplation of the parties. *Lyon* v. *Seby,* (N. D. 1915). 151 N. W. 31.

This case is avowedly decided on the authority of *Hayes* v. *Cooley,* 13 N. D. 204 and there is no attempt to reason out or justify the decision. *Hayes* v. *Cooley* does endeavor to do this and distinguish a set of facts exactly like those in the instant case, from facts and law as laid down in *Smead* v. *Foord,* 1 El. & El. 602 and *Houser* v. *Pearce,* 13 Kans. 104. In all of these cases the facts were substantially the same, namely that because of a breach of contract, there was a failure to cut certain grain which was injured or destroyed. In *Smead* v. *Foord,* the failure was to deliver a threshing machine, in all the others it was simply a refusal to cut. The difference which the North Dakota court sees in these cases is that in the English and Kansas cases the circumstances were such that it was within the contemplation of the parties that damage might result to the grain from failure to perform the contract. It is very hard to see, especially in the Kansas case, how the parties there could have contemplated injury to the grain any more than the parties in the North Dakota cases did, as the facts seem to be identical. It would seem to be very much in the minds of the contracting parties that failure to cut the grain might very probably result in loss or injury. There is no doubt that the instant case follows the law of North Dakota, but the weight of authority and reasoning would appear to be otherwise.